

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 07-6015

In Regard to the Matter of:
Bayside State Prison
Litigation

BENJAMIN PULLIN,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

MONDAY JUNE 16, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.
Certified Court Reporting & Videoconferencing
251 South White Horse Pike
Audubon, New Jersey 08106
856-546-1100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 2:11 PM.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

LOUGHRY & LINDSAY, ESQUIRES

BY: LAWRENCE W. LINDSAY, ESQUIRE

330 MARKET STREET

CAMDEN, NEW JERSEY 08102

856-968-9201

ATTORNEYS FOR THE PLAINTIFFS

ROSEMI & GRIEGEL, PC

BY: JAMES LAZZARO, ESQUIRE

- and -

BY: KENNETH W. LOZIER, ESQUIRE

1337 STATE HIGHWAY 33

HAMILTON SQUARE, NEW JERSEY 08690

609-586-2257

ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: Turn now to the opinion
2 and recommendation in the matter of Benjamin Pullin,
3 docket 07-6015.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to the Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Pullin.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Benjamin Pullin was in F Unit on the
18 30th of July, the day that Officer Baker was killed
19 and, of course, he was killed in that unit and as I
20 recall it Mr. Pullin may well have observed some of
21 it.

22 Interestingly enough, Mr. Pullin's
23 testimony with regard to the extraction of inmates
24 from F Unit, their being taken to the gym and being
25 returned to F Unit late that evening indicates that

1 he at least was subject to no assaults or beatings in
2 that time frame.

3 On or about August 1st, however, after
4 some events did occur, although as I'm about to
5 recite, not exactly as Mr. Pullin described them,
6 Corrections Officer Meyers, while making a tour of
7 the unit, observed Mr. Pullin standing on top of the
8 toilet shouting through a vent into the next cell
9 where there were other inmates something to the
10 effect that, as he describes it in his testimony,
11 look what they do to us for killing one of theirs
12 after they've done to all ours that they've killed,
13 apparently meaning the inmates.

14 As a result, Myers wrote a disciplinary
15 charge which is reflected in Exhibit D-218. As a
16 result of that disciplinary charge, a SOG unit was
17 called to extract Mr. Pullin from F Unit and take him
18 to the ad-seg or detention unit, now B Unit,
19 eventually to answer the charges in a court line.

20 Mr. Pullin, as he describes it, says
21 that at about 11:30 in the morning on August 1st he
22 was beaten near his cell door by SOGs whom he
23 described as having been hiding behind the door. He
24 was lured out of the cell, if that's the way to
25 characterize it, by Officers Davis and Meyers who

1 were officers at the unit. The SOGs then allegedly
2 descended upon him in the vicinity of his cell
3 beating him repeatedly.

4 He also testified that on the same day
5 that beating was repeated in the cell to which he was
6 sent to B Unit including having Officer Davis spit in
7 his face and also attributing to Davis remarks in the
8 nature of, "we're going to kill all of you for what
9 that kid did to Baker."

10 He testified that on August 2nd Jules
11 Robinson was brought into the same B Unit cell that
12 Mr. Pullin was occupying and that those who brought
13 him in there beat both of them on that occasion. He
14 went to court line on August 5th and claims once
15 again upon coming back to his cell from court line he
16 was beaten again, this time with local Corrections
17 Officers Snell and Davenport present. And he further
18 stated that while remaining in B Unit he was
19 repeatedly beaten thereafter whenever he made any
20 requests.

21 Once again, I find this testimony so
22 exaggerated and so illogical as not to be credible
23 and not to establish a claim on Mr. Pullin's behalf.
24 There really is nothing -- no sense, if you will, and
25 no discernible objective that anybody could achieve

1 from the defendant's side of the ledger, if you will,
2 by repeated beatings day after day after day of the
3 same people. The ultimate consequences if, in fact,
4 it were true just vastly outweigh whatever benefits,
5 by way of either discipline or even punishment could
6 be gained from such activity.

7 Furthermore, once again, Mr. Pullin
8 alleges the direct involvement of housing officers
9 such as Davis, Davenport and Snell, people who will
10 be remaining at Bayside long after the SOGs leave and
11 will have to administer a prison including situations
12 in their various wings and units where they are
13 vastly outnumbered and unarmed.

14 The thought that these officers would
15 put themselves at risk by either participating in or
16 even standing by and watching the alleged activities
17 of the SOG officers just makes no sense. It goes
18 against all training, goes against all logic, goes
19 against their personal interests and obviously their
20 personal safety.

21 Now, that doesn't mean that once in a
22 while that you don't have a rogue housing officer.
23 And I may at some point in the course of these
24 hearings find some credible evidence for that, but
25 it's not present in this case. And perhaps the most

1 incredible example of all is the acts that Mr. Pullin
2 attributes to Officer Davis. Officer Davis at
3 Bayside was a rookie in the state prison system. He
4 had been at Bayside for a month. To say that somehow
5 or other he would personally involve himself in these
6 events with emotional outbursts on behalf of Officer
7 Baker with whom he obviously had no long-standing
8 relationship and to be physically present for the
9 asserted activities of the SOG officers, and to spit
10 in a prisoner's face, once again, a month on the job,
11 makes no sense.

12 But Davis was not a rookie in the sense
13 of not having any experience in the prison system.
14 He put in three years at the Federal Correctional
15 Institution at Fairton. So here was a man on the one
16 hand brand new to the Bayside environment where one
17 would hardly expect him to act out in the way
18 described by Mr. Pullin here, but experienced in the
19 prison environment where (while I don't hold up our
20 federal prisons as any great panacea) I certainly can
21 infer that he would have learned and know the
22 difference between proper and improper conduct by a
23 corrections officer.

24 So here, as with some other cases,
25 where these particular events and acts attributable

1 to Officer Davis are so incredible, considered also
2 with the inherent incredibility of multiple daily
3 beatings for day after day after day, it really casts
4 doubt to the extent of rendering equally incredible
5 the other testimony that Mr. Pullin supplied here,
6 whether one considers it in his own case or in Mr.
7 Robinson's case.

8 Under the circumstances, there is a
9 complete absence of credible, reliable evidence
10 forthcoming from Mr. Pullin, even considering the
11 other evidence that might be in his case that would
12 support a verdict in his favor.

13 Finally, although not every item of
14 evidence has been discussed in this opinion/report,
15 all evidence presented to the Special Master was
16 reviewed and considered. For the reasons set forth
17 above I recommend in this report that the district
18 court enter an order and judgment of no cause for
19 action with regard to Benjamin Pullin.

20 Counsel I need about 20 minutes or so
21 and I will then have a decision in the two cases
22 heard yesterday. You're excused until then.

23 MR. LAZZARO: Thank you.

24 (Hearing Concluded)

25

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

T.O. Mastroianni

Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: June 17, 2008

<p>A</p> <p>absence 9:9</p> <p>accurate 10:6</p> <p>achieve 6:25</p> <p>act 8:17</p> <p>action 1:2 9:19 10:11,14</p> <p>activities 8:9</p> <p>activity 7:6</p> <p>acts 8:1,25</p> <p>administer 7:11</p> <p>ad-seg 5:18</p> <p>Agreement 4:7</p> <p>al 1:9</p> <p>allegations 4:11</p> <p>allegedactivities 7:16</p> <p>allegedly 6:1</p> <p>alleges 7:8</p> <p>answer 5:19</p> <p>anybody 6:25</p> <p>apparently 5:13</p> <p>applicable 4:11</p> <p>applied 4:8</p> <p>assaults 5:1</p> <p>asserted 8:9</p> <p>attorney 10:10 10:12</p> <p>ATTORNEYS 3:7,13</p> <p>attributable 8:25</p> <p>attributes 8:2</p> <p>attributing 6:7</p> <p>Audubon 1:24</p> <p>August 5:3,21 6:10,14</p>	<p>beating 6:3,5</p> <p>beatings 5:1 7:2 9:3</p> <p>behalf 6:23 8:6</p> <p>benefits 7:4</p> <p>Benjamin 1:7 4:2,17 9:19</p> <p>BISSELL 1:20 4:1</p> <p>brand 8:16</p> <p>brought 6:11,12</p> <p>C</p> <p>C 3:3 10:1,1</p> <p>called 5:17</p> <p>Camden 2:11 3:6</p> <p>case 7:25 9:6,7 9:11</p> <p>cases 8:24 9:21</p> <p>casts 9:3</p> <p>cause 9:18</p> <p>cell 5:8,22,24 6:2 6:5,11,15</p> <p>certainly 8:20</p> <p>Certificate 10:21</p> <p>Certified 1:23 2:7 10:4</p> <p>certify 10:5,9</p> <p>characterize 5:25</p> <p>charge 5:15,16</p> <p>charges 4:10 5:19</p> <p>circumstances 9:8</p> <p>Civil 1:2 4:14</p> <p>claim 6:23</p> <p>claims 6:14</p> <p>coming 6:15</p> <p>commencing 2:11</p> <p>Commission 10:20</p> <p>complete 9:9</p> <p>Concluded 9:24</p> <p>conduct 8:22</p> <p>consequences</p>	<p>7:3</p> <p>considered 9:1 9:16</p> <p>considering 9:10</p> <p>considers 9:6</p> <p>constitute 4:14</p> <p>Correctional 8:14</p> <p>corrections 5:6 6:16 8:23</p> <p>counsel 9:20 10:10,12</p> <p>course 4:19 7:23</p> <p>court 1:1,23 2:8 2:10 5:19 6:14 6:15 9:18</p> <p>credible 6:22 7:24 9:9</p> <p>C.S.R 10:19</p> <p>D</p> <p>daily 9:2</p> <p>date 10:8,21</p> <p>Davenport 6:17 7:9</p> <p>Davis 5:25 6:6,7 7:9 8:2,2,12 9:1</p> <p>day 4:18 6:4 7:2 7:2,2 9:3,3,3</p> <p>decision 4:8 9:21</p> <p>Defendants 1:10 3:13</p> <p>defendant's 7:1</p> <p>descended 6:2</p> <p>described 5:5,23 8:18</p> <p>describes 5:10 5:20</p> <p>detention 5:18</p> <p>difference 8:22</p> <p>direct 7:8</p> <p>directives 4:5</p> <p>discernible 6:25</p> <p>disciplinary 5:14,16</p> <p>discipline 7:5</p> <p>discussed 9:14</p> <p>district 1:1,2</p>	<p>2:10 9:17</p> <p>docket 4:3</p> <p>door 5:22,23</p> <p>doubt 9:4</p> <p>D-218 5:15</p> <p>E</p> <p>E 3:3,3 10:1,1</p> <p>effect 5:10</p> <p>either 7:5,15</p> <p>emotional 8:6</p> <p>employee 10:10 10:12</p> <p>enter 9:18</p> <p>environment 8:16,19</p> <p>equally 9:4</p> <p>ESQUIRE 3:5 3:10,11</p> <p>ESQUIRES 3:5</p> <p>establish 6:23</p> <p>et 1:9</p> <p>evening 4:25</p> <p>events 5:4 8:6,25</p> <p>eventually 5:19</p> <p>evidence 7:24 9:9,11,14,15</p> <p>exactly 5:5</p> <p>exaggerated 6:22</p> <p>example 8:1</p> <p>excused 9:22</p> <p>Exhibit 5:15</p> <p>expect 8:17</p> <p>experience 8:13</p> <p>experienced 8:18</p> <p>Expires 10:20</p> <p>extent 4:11 9:4</p> <p>extract 5:17</p> <p>extraction 4:23</p> <p>F</p> <p>F 4:17,24,25 5:17 10:1</p> <p>face 6:7 8:10</p> <p>fact 7:3</p> <p>facts 4:8</p> <p>Fairton 8:15</p> <p>FAUVER 1:9</p>	<p>favor 9:12</p> <p>federal 8:14,20</p> <p>finalized 4:13</p> <p>Finally 9:13</p> <p>financially 10:13</p> <p>find 6:21 7:24</p> <p>foregoing 10:5</p> <p>FORMAROLI 1:23</p> <p>forth 4:9 9:16 10:8</p> <p>forthcoming 9:10</p> <p>frame 5:2</p> <p>further 6:17 10:9</p> <p>Furthermore 7:7</p> <p>G</p> <p>gained 7:6</p> <p>Gerry 2:10</p> <p>goes 7:17,18,18</p> <p>going 6:8</p> <p>great 8:20</p> <p>GRIEGEL 3:9</p> <p>guiding 4:7</p> <p>gym 4:24</p> <p>H</p> <p>H 1:9</p> <p>HAMILTON 3:12</p> <p>hand 8:16</p> <p>heard 9:22</p> <p>Hearing 9:24</p> <p>hearings 7:24</p> <p>hereinbefore 10:8</p> <p>hiding 5:23</p> <p>HIGHWAY 3:11</p> <p>hold 8:19</p> <p>HONORABLE 1:20</p> <p>Horse 1:24</p> <p>House 2:10</p> <p>housing 7:8,22</p>
--	--	---	--	---

I illogical 6:22 improper 8:22 including 6:6 7:11 incredibility 9:2 incredible 8:1 9:1,4 indicates 4:25 infer 8:21 inherent 9:2 inmates 4:23 5:9 5:13 Institution 8:15 instructions 4:10 interested 10:13 Interestingly 4:22 interests 7:19 involve 8:5 involvement 7:8 issued 4:4 item 9:13	law 4:7 LAWRENCE 3:5 LAZZARO 3:10 9:23 learned 8:21 leave 7:10 ledger 7:1 license 2:8 LINDSAY 3:5,5 line 5:19 6:14,15 Litigation 1:6 local 4:13 6:16 logic 7:18 long 7:10 long-standing 8:7 look 5:11 LOUGHRY 3:5 LOZIER 3:11 lured 5:24	neither 10:9,11 new 1:2,24 2:9 2:11 3:6,12 8:16 10:4,20 Notary 2:9 10:3 10:20 number 2:8	place 10:8 PLAINTIFFS 3:7 Plaza 2:10 PM 2:11 point 7:23 present 6:17 7:25 8:8 presented 9:15 principles 4:7 prison 1:6 7:11 8:3,13,19 prisoner's 8:10 prisons 8:20 proceedings 2:6 proper 8:22 Public 2:9 10:3 10:20 Pullin 1:7 4:2,12 4:17,20 5:5,7 5:17,20 6:12 7:7 8:1,18 9:5 9:10,19 Pullin's 4:22 6:23 punishment 7:5 pursuant 4:5 put 7:15 8:14	remarks 6:7 rendering 9:4 repeated 6:5 7:2 repeatedly 6:3 6:19 report 4:15 9:17 Reporter 2:8 10:4 Reporting 1:23 requests 6:20 required 4:15 result 5:14,16 returned 4:25 review 4:13 reviewed 9:16 risk 7:15 Robinson 6:11 Robinson's 9:7 rogue 7:22 rookie 8:3,12 ROSELLI 3:9 Rule 4:14
J JAMES 3:10 Jersey 1:2,24 2:9 2:11 3:6,12 10:5,20 job 8:10 JOHN 1:20 JUDGE 4:1 judgment 9:18 Jules 6:10 July 4:18 June 1:15 10:21 jury 4:9,10	M making 5:6 man 8:15 MARKET 3:6 Master 1:20 4:6 4:16 9:15 Master's 4:6 Mastroianni 1:23 2:7 10:3 10:19 matter 1:5 2:7 4:2 mean 7:21 meaning 5:13 Mejias 4:10 Meyers 5:6,25 minutes 9:20 MONDAY 1:15 month 8:4,10 morning 5:21 multiple 9:2 Myers 5:14	once 6:14,21 7:7 7:21 8:10 opinion 4:1 opinion/report 4:4 9:14 order 4:5,16 9:18 outbursts 8:6 outnumbered 7:13 outweigh 7:4	R R 3:3 10:1 really 6:24 9:3 reasons 9:16 recall 4:20 recite 5:5 recommend 9:17 recommenda... 4:2 Reference 4:5 4:16 reflected 5:15 regard 1:5 4:23 9:19 relationship 8:8 relative 10:10,12 reliable 9:9 remaining 6:18 7:10	S S 3:3 safety 7:20 says 5:20 sense 6:24 7:17 8:11,12 sent 6:6 set 4:9 9:16 10:8 seven 4:15 Shorthand 10:4 shouting 5:8 side 7:1 situations 7:11 Snell 6:17 7:9 SOG 5:16 7:17 8:9 SOGs 5:22 6:1 7:10 South 1:24 Special 1:20 4:6 4:6,16 9:15 spit 6:6 8:9 SQUARE 3:12 standing 5:7 7:16 state 1:6 2:9
K KENNETH 3:11 kid 6:9 kill 6:8 killed 4:18,19 5:12 killing 5:11 know 8:21	N N 3:3 nature 6:8 near 5:22 need 9:20	P P 3:3,3 panacea 8:20 paragraph 4:15 participating 7:15 particular 8:25 parties 10:11 PC 3:9 people 7:3,9 personal 7:19,20 personally 8:5 physically 8:8 Pike 1:24		
L late 4:25				

3:11 8:3 10:4 10:20 stated 6:18 States 1:1 2:10 stenographica... 10:7 STREET 3:6 subject 5:1 supplied 9:5 support 9:12 system 8:3,13	V various 7:12 vastly 7:4,13 vent 5:8 verdict 9:12 vicinity 6:2 Videoconfere... 1:23 vs 1:8	251 1:24 3 30th 4:18 30X100085700 2:8 33 3:11 330 3:6 5 5 10:20 5th 6:14 52.1 4:14 6 609-586-2257 3:12 8 856-546-1100 1:25 856-968-9201 3:7		
T T 10:1,1 take 5:17 taken 2:7 4:24 10:7 testified 6:4,10 testimony 4:23 5:10 6:21 9:5 10:6 Thank 9:23 theirs 5:11 Theresa 2:7 10:3 10:19 thought 7:14 three 8:14 time 5:2 6:16 10:7 toilet 5:8 top 5:7 tour 5:6 training 7:18 transcript 2:6 4:14 10:6 true 7:4 10:6 Turn 4:1 two 9:21	W W 1:20 3:5,11 Walker 4:10 watching 7:16 way 5:24 7:5 8:17 went 6:14 we're 6:8 White 1:24 WILLIAM 1:9 wings 7:12 written 4:15 wrote 5:14			
	X XIO857 10:21			
	Y years 8:14 yesterday 9:22			
	0 07-6015 1:2 4:3 08102 2:11 3:6 08106 1:24 08690 3:12			
	1 1st 5:3,21 11:30 5:21 1337 3:11 16 1:15 17 10:21			
U ultimate 7:3 unarmed 7:13 underlie 4:8 unit 4:17,19,24 4:25 5:7,16,17 5:18,18 6:1,6 6:11,18 United 1:1 2:10 units 7:12	2 2nd 6:10 2:11 2:11 20 9:20 2008 1:15 10:21 2010 10:20			